

**CONSUMER'S GUIDE TO**

# ***WORKER'S COMPENSATION***

## ***INSURANCE***

### ***FOR EMPLOYERS***



State of Wisconsin  
Office of the Commissioner of Insurance  
P.O. Box 7873  
Madison, WI 53707-7873  
Web site address: [oci.wi.gov](http://oci.wi.gov)

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P.O. Box 7873  
Madison, WI 53707-7873

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OCI's World Wide Web Home Page  
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For your convenience, a copy of the Office of the Commissioner of Insurance's (OCI) [complaint form](#) is available at the back of this booklet. A copy of OCI's complaint form is also available on OCI's Web site. You can print it, complete it, and return it to the above mailing address.

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This guide is not a legal analysis of your rights under any insurance policy or government program. Your insurance policy, program rules, Wisconsin law, federal law, and court decisions establish your rights. You may want to consult an attorney for legal guidance about your specific rights.

OCI does not represent that the information is complete, accurate, and timely in all instances. All information is subject to change on a regular basis, without notice.

All questions relating to the Wisconsin Worker's Compensation Act should be directed to the Department of Workforce Development (DWD) at (608) 266-1340.

All questions relating to the Wisconsin Worker's Compensation Insurance Pool should be directed to the Wisconsin Compensation Rating Bureau (WCRB) at (262) 796-4540.

All questions relating to the insurance laws should be directed to OCI at 1-800-236-8517.

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**The mission of the Office of the Commissioner of Insurance . . .**  
**Leading the way in informing and protecting the public**  
**and responding to their insurance needs.**

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**TABLE OF CONTENTS**

|  | <b>Page</b> |
|--|-------------|
| Introduction .....   | 4           |
| Wisconsin Worker's Compensation Act .....  | 4           |
| Benefits Payable under Worker's Compensation Insurance .....   | 4           |
| Who is Covered by the Worker's Compensation Act? Are There Any Exceptions? .....                     | 5           |
| Worker's Compensation Insurance Requirements .....   | 5           |
| Who is Covered? .....  | 6           |
| Independent Contractors .....  | 7           |
| Out-of-State Employers .....   | 7           |
| Volunteer Workers and Worker's Compensation in Wisconsin .....                                       | 8           |
| Must Employers Purchase Worker's Compensation Insurance? .....                                       | 9           |
| What is Self-Insurance? .....  | 9           |
| Penalties for Not Obtaining Worker's Compensation Insurance or Permission to be Self-Insured .....   | 9           |
| What is the Uninsured Employers Fund? .....  | 9           |
| Buying Insurance .....   | 10          |
| Administration of the System .....   | 11          |
| Cost of Insurance .....  | 12          |
| Premium Rate Determination .....   | 12          |
| The Classification System in Worker's Compensation Insurance .....                                   | 12          |
| The Experience Rating Plan .....   | 12          |
| Health Insurance Coverage of Farm Accidents .....  | 13          |
| Legal Protections in the Event of Bankruptcy .....   | 13          |
| Where Can I Get More Information About Coverage Under the Wisconsin Worker's Compensation Act? ..... | 13          |
| Frequently Asked Questions .....   | 14          |
| Worker's Compensation Questions? Here's Whom to Contact .....  | 17          |
| Publication List   |             |
| Complaint Form   |             |

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## Introduction

Worker's compensation is protection mandated by state law for a worker and his or her dependents against injury and death occurring in the course of employment. It is not health insurance and is not intended to compensate for disability other than disability caused by injury arising out of employment.

The purpose of the worker's compensation system is to provide financial and medical benefits to the victims of "work-related" injuries and their families regardless of fault. The laws place the financial burden on the employer and ultimately the consumer. This compensation is generally the exclusive remedy for the injured employee.

## Wisconsin Worker's Compensation Act

### Where did Worker's Compensation come from?

Before 1911, a worker who was injured in the course of his or her employment could sue his or her employer in a civil or "tort" action, which was the same remedy available to a person injured under other circumstances. The tort remedy, however, had certain problems. It required the worker to prove that the injury occurred because the employer was negligent and the employer had three important defenses: (1) that the worker was also negligent, (2) that the worker knew of the dangers involved and "assumed the risk," or (3) that the injury occurred because of the negligence of a "fellow employee." Under this system it was very difficult for workers to recover against their employers. If they did win, however, there were no dollar limits on what a jury could award.

In 1911, Wisconsin adopted a Workmen's Compensation Act (Act). The new remedy is essentially a "no-fault" system under which a worker no longer has to prove negligence on the part of the employer, and the employer's three defenses were eliminated. The intent of the law was to require an employer to promptly and accurately compensate a worker for any injury suffered on the job, regardless of the existence of any fault or whose it might be.

In return, the Act limited the amount that a worker could recover. Workers are only entitled to (1) certain wage loss benefits, (2) the cost of medical treatment, and (3) certain disability payments. Under the old system, workers had been able to recover for pain and suffering, loss of enjoyment of life, and other damages that a jury might award. Recovery under worker's compensation is limited to these three areas, no matter how serious the injury.

## Benefits Payable under Worker's Compensation Insurance

Worker's compensation insurance provides distinct benefits for employees who have injuries or illnesses related to employment:

- 1) Coverage of all reasonable and necessary medical costs.
- 2) Benefits for temporary wage loss [Temporary Partial Disability (TPD) or Temporary Total Disability (TTD)] sustained by an employee while recovering from injury. Eligibility for temporary disability benefits are determined and must be documented by a doctor. Benefits for temporary wage loss due to disability are based on two-thirds of the employee's wage rate up to a specified maximum amount.
- 3) Benefits for permanent disability [Permanent Partial Disability (PPD) or Permanent Total Disability (PTD)] if the employee does not fully recover from the injury. Permanent disability is awarded for the potential, or actual, loss of earning capacity. The amount of benefit payment for permanent disability depends on the seriousness of the permanent disability.
- 4) Vocational rehabilitation.
- 5) If a death occurs to an injured employee, death benefits and burial expense will be paid up to specific limits.

### Medical Benefits

There is full, complete, and unlimited coverage of all bills for medical treatment and for hospital services provided to workers injured in the course of their employment.

### Indemnity Benefits

There are weekly cash payments to workers to generally replace lost income. In Wisconsin, there are several different kinds of payments that make up indemnity benefits. The principle kinds are:

- **Temporary Total.** In 2003, two-thirds of an employee's earnings, subject to a maximum of \$669 per week, are paid to injured workers until they recover from work-related injuries and return to work. In 2004, the maximum is \$687 per week.

- **Permanent Total.** Injured workers, who are 100% disabled due to a work-related injury, are entitled to receive two-thirds of their earnings subject to a maximum weekly amount that is \$669 in 2003 and \$687 in 2004 for the remainder of their lives.
- **Permanent Partial.** After the healing period has ended, workers who sustain permanent partial disability receive additional compensation of two-thirds of their earnings, subject to a maximum of \$222 per week in 2003 and \$232 per week in 2004, for a specified number of weeks related to the degree of disability.
- **Death Benefit.** There are several benefits payable when an employee is fatally injured dependent upon the worker's family status at the time of death. The maximum payable for a worker with dependents is \$200,700 in 2003 and \$206,100 in 2004. A maximum burial expense of \$6,000 currently is also payable.

### **Vocational Rehabilitation**

The cost of rehabilitation is fully covered, and the injured worker is also entitled to weekly indemnity payments during the rehabilitation period.

If you have any questions regarding worker's compensation benefits paid to an injured employee, or if you have a complaint about the payment of benefits, contact:

**Wisconsin Worker's Compensation Division**  
**Department of Workforce Development**  
<http://www.dwd.state.wi.us>

**Madison Area Office:**  
Worker's Compensation Div.  
201 E. Washington Ave., Rm. C100  
P.O. Box 7901  
Madison, WI 53707-7901  
(608) 266-1340 Phone  
(608) 267-0394 Fax

**Milwaukee Area Office:**  
Worker's Compensation Div.  
State Office Building, Rm. 330  
819 N. Sixth Street  
Milwaukee, WI 53203  
(414) 227-4381 Phone  
(414) 227-4012 Fax

**Appleton Area Office:**  
Worker's Compensation Div.  
Fidelity Bank Bldg., Rm. 310  
1500 N. Casaloma Dr.  
Appleton, WI 54913-8200  
(920) 832-5450 Phone  
(920) 832-5355 Fax

## **Who is Covered by the Worker's Compensation Act (Act)? Are There Any Exceptions?**

Nearly all employers in Wisconsin are covered. This includes both public and private employers. In fact, when talking about worker's compensation, it is easier to discuss the exceptions. There are a few classes of workers who are covered by federal laws and are not covered by the Act.

Employees of the federal government (such as postal workers, employees at a veteran's administration hospital, or members of the armed forces) are covered by federal laws. People who work on interstate railroads are covered by the Federal Employers Liability Act. Seamen on navigable waters are covered by the Merchant Marine Act of 1920, and people loading and unloading vessels are covered by the Longshoremen's and Harbor Worker's Compensation Act.

The only employee exceptions to the Wisconsin Worker's Compensation Act insurance requirement are domestic servants, some farm employees, volunteers, including volunteers of nonprofit organizations that receive money or other things of value totaling not more than \$10.00 per week, and religious sect members that qualify and are certified for an exemption. Virtually all other workers and employers are subject to the Act.

For a detailed explanation of these exceptions, please contact the Worker's Compensation Division, Bureau of Insurance Programs at (608) 266-1340.

## **Worker's Compensation Insurance Requirements**

An employer must carry a worker's compensation insurance policy if they do any one of the following:

- 1) Usually employs three or more persons full- or part-time. You need insurance immediately; or

- 2) Employs one or more full- or part-time employees to whom you have paid gross combined wages of \$500 or more in any calendar quarter for work done at one or more locations in Wisconsin. You must have insurance by the 10th day of the first month of the next calendar quarter; or
- 3) If you are a farmer who employs six or more employees (at one or more locations) on the same day for 20 days (consecutive or nonconsecutive) during a calendar year. A calendar year is January through December. The farmer must have insurance within 10 days after the 20th day of employment. Note: Some relatives of the farmer are not counted as employees. Call the Worker's Compensation Division at (608) 266-1340 to see whether you need to count all your relatives among your employees.

(Sections 102.04 and 102.07, Wis. Stat.)

Wisconsin law requires that a subject employer with employees working in Wisconsin must have a worker's compensation insurance policy with an insurance company licensed to write worker's compensation insurance in Wisconsin.

Each individual employer must provide a worker's compensation insurance policy for its employees. One employer cannot provide worker's compensation insurance coverage for another employer's employees even where or whether or not they voluntarily sign a contract to provide the coverage. Every employer, as described in s. 102.04 (1), Wis. Stat., is required under s. 102.28 (2), Wis. Stat., to have a worker's compensation insurance policy in the name of the employer/owner or in the name of the business entity.

An employer subject to the Act may not withhold or collect any money from employees or any other person, including independent contractors and subcontractors, to pay for worker's compensation insurance. To do so is illegal. Also, no agreement by an employee waiving rights to compensation is valid. [ss. 102.16 (3) and 102.16 (5), Wis. Stat.]

## Who is Covered?

### **Family Members**

Family members are considered and counted as employees and covered by the Act. With the exception of farmers, an employee's relationship to the owner has no bearing on the requirement to carry worker's compensation insurance.

### **Minors**

Minors are considered and counted as employees and covered by the Act.

### **Part-time Employees**

Part-time employees are considered and counted as employees and covered by the Act. Whether an employee works part-time or full-time has no bearing on the requirement to carry worker's compensation insurance.

### **Partnership or Small Business**

The employees of partnerships, sole proprietorships, limited liability companies and corporations are covered by the Act. Partners, sole proprietors, and members of limited liability companies are exempt but may opt for coverage on themselves.

All worker's compensation policies exclude the sole proprietor, partners, and members of limited liability companies unless specifically endorsed to include them. Sole proprietors, partners, and members of limited liability companies may voluntarily purchase worker's compensation insurance to cover their own work related injuries and illnesses.

Employers who have an existing worker's compensation insurance policy may add themselves to that policy by notifying their agent and paying the additional premiums. It is necessary to have the policy endorsed to name the sole proprietor, partners, or members of limited liability companies for them to be covered.

### **Self-Employed Individuals**

A business that is neither a partnership nor a corporation but is owned by one person is called a "sole proprietorship." The owner of that business is "self-employed." The employees of a sole proprietorship are covered by the Act, but the sole proprietor (the person who owns the business) is "self-employed." He or she is not an employee of anyone and accordingly is not covered by the Act unless he or she chooses to be. A sole proprietor who has no employees, is not required to carry a worker's compensation insurance policy.

### **Corporate Officers**

Corporate officers are considered and counted as employees and are covered by the Act.



All worker's compensation insurance policies covering corporations include corporate officers. However, in a closely held corporation, defined as a corporation with not more than 10 stockholders, no more than two officers may exclude themselves from coverage. If the corporation has other employees, and/or officers, an insurance policy is required and the exclusion for officers must be made by an endorsement on the worker's compensation insurance policy. The name(s) of the officer(s) must be given. The exclusion will remain in effect for the policy period. Officers who are excluded will still be counted in determining whether the employer is subject to the Act under s. 102.04 (1) (b), Wis. Stat.

If a closely held corporation has no more than two corporate officers and has no other employees, a worker's compensation insurance policy is not required if both officers elect not to be subject to the Act by filing with the Worker's Compensation Division the Notice of Corporate Officer Option.

**Please note: A corporation with more than two corporate officers or any other employee or employees is not eligible to file a Notice of Corporate Officer Option and must obtain and/or maintain a worker's compensation insurance policy.**

If you have any questions regarding whether a corporation qualifies to file a Notice of Corporate Officer Option, please contact the Worker's Compensation Division, Bureau of Insurance Programs at (608) 266-1340.

## **Independent Contractors**

If one company hires another company to come in and do some work for it, the second company is ordinarily an "independent contractor" and not an employee of the first company. Sometimes, however, a company hires one person to come in and perform a specific job and disputes arise as to whether or not that person is an employee or an independent contractor.

A person is not an independent contractor for worker's compensation purposes just because they say they are, or because the contractor over them says so, or they both say so, or even if other regulators say so.

There are specific statutory conditions that must be met before a worker in the service of another person is considered not to be an employee. There are nine

conditions that establish whether independent contractors are employees. Any owner/operator or independent contractor who does not meet and maintain all of the nine specific tests of independence in the Wisconsin law (and who is not an employer himself or herself) is an employee of any employer they are working under in Wisconsin.

Under s. 102.07 (8), Wis. Stat., a person is required to meet a nine-part test before a person can be considered an independent contractor rather than an employee. To be considered an independent contractor and not an employee, an individual must meet and maintain all nine of the following requirements: 1) maintain a separate business; 2) holds or has applied for a federal employer identification number with the federal internal revenue service or has filed business or self-employment income tax returns with the federal internal revenue service based on that work or service in the previous year; [Note: When requesting a Federal Identification Number (FEIN) from the IRS, you must inform the IRS that you are required by Wisconsin Worker's Compensation law to obtain a FEIN. A social security number cannot be substituted for a FEIN and does not meet the legal burden of s. 102.07 (8), Wis. Stat.] 3) operate under specific contracts; 4) be responsible for operating expenses under the contracts; 5) be responsible for satisfactory performance of the work under the contracts; 6) be paid per contract, per job, by commission, or by competitive bid; 7) be subject to profit or loss in performing the work under the contracts; 8) have recurring business liabilities or obligations; and 9) be in a position to succeed or fail if business expense exceeds income.

Independent contractors who have no employees or who are not required to be insured may buy a policy to cover themselves.

## **Out-of-State Employers**

Out-of-state employers with employees working in Wisconsin must have a worker's compensation insurance policy with an insurance company licensed to write worker's compensation insurance in Wisconsin.

Section 102.28 (2), Wis. Stat., requires that an employer subject to the Act with employees working in Wisconsin must have a worker's compensation insurance policy with an insurance company licensed to write worker's compensation insurance in Wisconsin. The policy must be endorsed to name

Wisconsin as a covered state in section 3-A of the policy. If an out-of-state employer has a worker's compensation insurance policy with an insurance company licensed to write worker's compensation in Wisconsin, they may simply add Wisconsin coverage by name to section 3-A of the policy endorsement.

If an out-of-state employer has a worker's compensation insurance policy with an insurance company not licensed to write in Wisconsin, they must obtain a policy from a Wisconsin-licensed insurance company to cover their Wisconsin exposure. The insurance company must file the properly endorsed policy with the Wisconsin Compensation Rating Bureau.

For more information on out-of-state employers contact:

**Street Address**

Wisconsin Compensation Rating Bureau  
20700 Swenson Drive, Suite 100  
Waukesha, WI 53186

**Mailing Address**

Wisconsin Compensation Rating Bureau  
P.O. Box 3080  
Milwaukee, WI 53201-3080

(262) 796-4540 Phone  
(262) 796-4400 Fax

**Internet Address**

<http://www.wcrb.org>

## **Volunteer Workers and Worker's Compensation in Wisconsin**

The Wisconsin Worker's Compensation Insurance Act does not provide for worker's compensation coverage for volunteers, including volunteers of nonprofit organizations that receive money or other things of value totaling not more than \$10.00 per week. [s. 102.07 (11) and 102.07 (11m), Wis. Stat.] Volunteers cannot be covered under a worker's compensation policy and cannot collect worker's compensation benefits if they incur an injury or illness during the course of their voluntary service. The worker's compensation law has no jurisdiction over any other form of relief that may be available to a volunteer.

A volunteer for a nonprofit organization that is exempt or eligible for exemption from Federal income taxation under the Federal Internal Revenue Code, who receives nominal payments of money or other things

of value totaling not more than \$10.00 per week is not considered to be an employee under the Worker's Compensation Law, unless the nonprofit organization elects to cover the volunteer under its policy.

Although the statute is clear that volunteers are not covered by the Worker's Compensation Act, questions often arise regarding coverage for volunteers. The two central questions regarding volunteer workers are:

1. What is the definition of a volunteer?
2. When, how and if volunteers evolve into employees?

A volunteer is a person who provides services of his or her own free will to or on behalf of an organization or entity who neither receives nor expects to receive any kind of pay or compensation for his or her services.

A popular element of consideration in pondering when, how and if volunteers evolve into employees is "does the worker receive or expect to receive compensation (almost anything of value including discounts, certificates, credits, vouchers, etc.) in exchange for his or her services?" If not, the worker is probably a volunteer. If the answer is yes, they are most likely an employee.

The situation gets murky when the volunteer worker is a member of an organization that receives compensation for providing the services of the volunteer worker. A general "rule of thumb" is if nothing of value changes hands from the recipient of services to the worker (the provider or performer of services), this is probably a volunteer situation. However, if something of value is received, accepted or expected by the worker (the provider or performer of the services) or the organization in exchange for the work performed, an employee/employer relationship may exist. Any claim filed by a worker (the provider or performer of services) injured while performing services under these conditions would be decided according to the facts at the time of injury. There is no way to predict whether the claim would result in a finding that the worker was a volunteer or that there was an employee/employer relationship.

If you have questions regarding volunteer workers and the Wisconsin Worker's Compensation Act, contact the Wisconsin Worker's Compensation Division, Bureau of Insurance Programs, at (608) 266-1340 or write to P.O. Box 7901, Madison, WI 53707-7901. The Division is located in the GEF 1 State Office Building, Room C100, 201 East Washington Avenue, Madison.



## **Must Employers Purchase Worker's Compensation Insurance?**

The law requires that every employer subject to the Act must provide some way of assuring that it can pay benefits to its workers should they become injured. Most employers in Wisconsin provide this security by purchasing an insurance policy from a private insurance company. The insurance company then reports to the State of Wisconsin Department of Workforce Development (DWD) that it is providing coverage for the employer. Some employers, however, are "self-insured."

## **What is Self-Insurance?**

Some employers who are financially sound (and usually quite large) are "self-insured." An employer can only be self-insured if it obtains permission from the DWD. DWD requires employers to demonstrate a very sound financial condition in order to be self-insured.

## **Penalties For Not Obtaining Worker's Compensation Insurance or Permission to be Self-Insured**

There are severe penalties for the failure of an employer to provide worker's compensation insurance coverage. First, if a worker is injured, the employer is personally liable, for uninsured benefit claims for which your employees are eligible. [s. 102.85 (5), Wis. Stat.]

Second, the Worker's Compensation Division actively enforces the Act. If an uninsured employer fails to obtain insurance when required, the Department may order the uninsured employer to cease operations until the uninsured employer complies with the Wisconsin Worker's Compensation Act. [s. 102.28 (4), Wis. Stat.]

By law, a penalty is imposed on an employer for failing to have worker's compensation insurance coverage where required. The normal penalty is twice the amount of premium not paid during an uninsured time period or \$750, whichever is greater. Under certain circumstances, an employer who has an illegal lapse in worker's compensation insurance of seven consecutive days or less, can be subject to a penalty of \$100 for each day he/she is uninsured up to seven days, provided 1) the employer has not previously been penalized for not having worker's compensation insurance coverage; and 2) no injury

that the employer is liable for under s. 102.03, Wis. Stat., occurred during the uninsured period. If the illegal lapse is greater than seven days, the normal penalty assessment will apply.

In addition, an uninsured employer is personally liable for reimbursement to the Uninsured Employers Fund for benefit payments made by the Fund under s. 102.81 (1), Wis. Stat., to an injured employee (or the employee's dependents) of the uninsured employer and do not have the normal exemptions of property from seizure and sale on execution of a judgment. The penalties and reimbursements to the Fund are mandatory and non-negotiable.

## **What is the Uninsured Employers Fund?**

The Uninsured Employers Fund (UEF) pays worker's compensation benefits on valid worker's compensation claims filed by employees who are injured while working for illegally uninsured Wisconsin employers. When a compensable claim is filed, the UEF pays the injured employee worker's compensation benefits as if the uninsured employer had been insured.

## **How is the UEF Funded?**

It is funded through penalties assessed against employers for illegally operating a business without worker's compensation insurance. The penalties are mandatory and non-negotiable. In addition, the department pursues reimbursement from each uninsured employer of benefit payments made by the UEF under s. 102.81 (1), Wis. Stat., to the employee of that uninsured employer or to the employee's dependents. The UEF uses aggressive collection action (including warrants, levies, garnishment and execution against property) to secure satisfaction of penalty assessments and reimbursement of claims paid by the fund.

## **When was the UEF Implemented?**

The UEF applies only to injuries occurring on or after July 1, 1996. Uninsured Employers Fund claims filed for injuries occurring prior to July 1, 1996, are not valid and will be denied. [s. 102.81 (7), Wis. Stat.]

## **How is a UEF Claim Application Filed?**

To file a claim, an injured worker must complete an Uninsured Employers Fund Claim Application and provide the required documentation. In addition, a claimant is expected to provide assistance to the

department or its agent, including copies of relevant payroll checks, check stubs, bank records, wage statements, tax returns or other similar documentation in determining whether their employer is liable for the injury. A claimant is also required to document any medical treatment, vocational rehabilitation services and other bills or expenses related to a claim. A UEF claim form can be obtained from the Worker's Compensation Division.

### **Will the Department Verify the Information provided in a UEF Claim Form?**

Yes, the claim will be thoroughly investigated. In verifying information submitted in support of a claim for compensation, the department or its agent may share information related to a claim with other government agencies, including those responsible for tax collection, unemployment insurance, medical assistance, vocational rehabilitation, family support or general relief.

### **What if an Alleged uninsured Employer Refuses to Cooperate with the Department?**

An employer who is alleged to be uninsured is required to cooperate with the department or its agent in the investigation of a claim by providing any records related to payroll, personnel, taxes, ownership of the business or its assets or other documents the department or its agent requests from the employer to determine the employer's liability under s. 102.03, Wis. Stat. If an employer fails to provide requested information, the department may presume the employer is an uninsured employer and assess the appropriate penalties.

### **Once a UEF Claim Application is Filed, How long does it take to Process the Claim?**

Within 14 days after receiving a completed UEF claim application, the department or its agent will mail the first indemnity payment to the injured employee, deny the claim or explain to the employee who filed the claim the reason that the claim is still under review. The department or its agent will report to the employee regarding the status of the claim at least once every 30 days from the date of the first notification that the claim is under review until the first indemnity payment is made or the claim is denied.

### **Who Can I Contact for More Information Regarding the UEF?**

Call or write the Wisconsin Worker's Compensation Division, Bureau of Insurance Programs. The mailing

address is P.O. Box 7901, Madison, Wisconsin 53707-7901. The telephone number is (608) 266-1340 or you can reach them by fax at (608) 266-6827.

## **Buying Insurance**

### ***Open Marketplace***

There are about 300 insurance companies licensed to write worker's compensation insurance in Wisconsin. Worker's compensation insurance is obtained through an insurance agent and/or an insurance company. The State of Wisconsin does not write or provide worker's compensation insurance coverage. If you have or know an insurance agent, you may contact them; if not, you can consult a telephone book for a listing of insurance companies in your area.

If an insurance company turns down your application for insurance, you should ask your agent to search the marketplace for another company. A list of Licensed Worker's Compensation Insurance Companies and a Directory of Licensed Insurers that includes addresses and phone numbers is available on OCI's Web site at <http://oci.wi.gov>.

### ***Wisconsin Worker's Compensation Insurance Pool***

If coverage is not available in the open market, your agent should submit an application to the Wisconsin Compensation Rating Bureau (WCRB). The WCRB acts as administrator and trustee of the Wisconsin Worker's Compensation Insurance Pool (Pool).

The Pool is a risk-sharing plan created to provide worker's compensation insurance to any employer who is unable to obtain coverage in the open market and who is, in good faith, entitled to such insurance. Out-of-state employers with no Wisconsin operations and employers who owe the Pool monies from prior policies are not eligible for coverage from the Pool.

The WCRB acts as administrator and trustee of the Pool. The WCRB will assign an insurance company to issue and service a worker's compensation insurance policy for you. The premium cost is generally the same for assigned coverage. Pool insureds lose the benefit of possible insurance company dividends and premium discounts for large employers, so it is in the interest of larger employers to find voluntary coverage if at all possible.

All insurers licensed to write worker's compensation insurance in Wisconsin must participate in funding

the Pool, and are represented by eight insurance companies that have been designated as servicing carriers. The insurance company assigned to service a policy issued through the Pool writes the policy in its own name and provides claims, loss control, auditing, and other services, just as they would for their voluntarily written policyholders.

For more information on the Pool, contact your agent or the WCRB at:

**Street Address**

Wisconsin Compensation Rating Bureau  
20700 Swenson Drive, Suite 100  
Waukesha, WI 53186

**Mailing Address**

Wisconsin Compensation Rating Bureau  
P.O. Box 3080  
Milwaukee, WI 53201-3080

(262) 796-4540 Phone  
(262) 796-4400 Fax

**Internet Address**

<http://www.wcrb.org>

## **Administration of the System**

### ***Office of the Commissioner of Insurance***

The State of Wisconsin Office of the Commissioner of Insurance (OCI) supervises the insurance industry in Wisconsin. OCI examines industry financial practices and market conduct, licenses agents, reviews policy forms for compliance with state legislation, investigates consumer complaints, and provides consumer information.

OCI licenses the Wisconsin Compensation Rating Bureau and all insurance companies who transact worker's compensation business and all agents or intermediaries who sell worker's compensation insurance in Wisconsin. OCI regularly examines the Wisconsin Compensation Rating Bureau and insurance companies to make certain that they are meeting their obligations under the law.

OCI is located at 125 South Webster Street, P.O. Box 7873, Madison, WI 53707-7873. The telephone number is (608) 266-3585 (in Madison) or 1-800-236-8517 (outside Madison).

### ***Wisconsin Worker's Compensation Division***

The Worker's Compensation Division is a division of the State of Wisconsin, Department of Workforce Development. The Worker's Compensation Division is responsible for the administration of the Worker's Compensation Act of Wisconsin, Chapter 102.

The Worker's Compensation Division administers programs to assure that injured workers receive required financial and other benefits from insurers and self-insured employers, to encourage injured worker's rehabilitation and reemployment, and to promote techniques that reduce the number of work-related injuries, illnesses, and death. The Division administers Chapter 102 with respect to enforcement, payment of claims, violations, compliance and enforcement of insurance requirements and other related duties. All claims involving loss of time from work must be reported to the Worker's Compensation Division. Disputed worker's compensation claims are adjudicated by the Worker's Compensation Division.

The Wisconsin Worker's Compensation Division is located at 201 East Washington Avenue, Room C100, P.O. Box 7901, Madison, WI 53707-7901. The telephone number is (608) 266-1340.

### ***The Wisconsin Compensation Rating Bureau***

The Wisconsin Compensation Rating Bureau (WCRB) is a licensed rate service organization for worker's compensation insurance in Wisconsin. It was created by Wisconsin law, and while it is regulated by OCI and works very closely with the Worker's Compensation Division, the WCRB is not a State agency. The WCRB is an unincorporated association of insurers who, by law, must be members of the WCRB.

The WCRB is responsible for the classification of employers, the rates and rating plans used, all policy forms and endorsements and the collection and analysis of all statistical and other data needed to meet its responsibilities. All rate, rating plans, forms, etc., must be filed with and approved by OCI before insurers can use them. Deviations are not permitted.

The WCRB assists the Worker's Compensation Division in its enforcement activities. By law, the WCRB receives required information on every worker's compensation policy issued to every employer with operations in Wisconsin and every termination thereof, and transmits this information via computer to the Worker's Compensation Division. The WCRB also

administers the Wisconsin Worker's Compensation Insurance Pool.

The Wisconsin Compensation Rating Bureau is located at 20700 Swenson Drive, Suite 100, Waukesha, WI 53186. The telephone number is (262) 796-4540.

## **Cost of Insurance**

The cost of insurance will vary depending on how hazardous jobs in your business classification are, based on the basis of the past experience in your industry and your gross payroll. It will, for example, cost more to insure blasters than it will barbers. Employers are classified for worker's compensation insurance purposes by the predominate business of the employer and not the specific job.

For example, in a manufacturing risk situation, the product manufactured determines the business of the insured employer. In other words, General Motors would be classified as an automobile manufacturer. There are many different kinds of jobs involved in the manufacturing of automobiles, some of which are more hazardous than others. Nonetheless, all of these jobs are being performed for an employer engaged in the business of manufacturing automobiles, and therefore, all of the employees' payrolls would be classified in the same classification.

Three occupations are common to so many businesses that special classifications have been established for them. These "standard exception" classifications cover clerical office employees, outside sales people, and drivers. The standard exception classes are the only classifications that are not related to the business of the employer. Instead, they are related to the job as these jobs are fairly common to all employers.

## **Premium Rate Determination**

The WCRB sets the premium rate for each class with the approval of the Commissioner of Insurance. If you feel that your business is not properly classified or the premium charge is not proper, you can appeal to the WCRB for review of your situation. If you are still not satisfied with the WCRB's decision, you may request, in writing, that the Commissioner of Insurance hold a hearing to review the WCRB's decision. (s. 626.31, Wis. Stat.)

## **The Classification System in Worker's Compensation Insurance**

The object of the worker's compensation classification system is to group similar employers so that each classification reflects losses common to them. Since losses vary widely by business or industry of employers, charging the statewide average rates would result in some employers paying too high a premium, while employers in other businesses or industries would pay less than their fair share.

Accordingly, employers are classified by the business or industry in which they operate to reflect this variation in loss costs. Generally, similar businesses have similar exposures to occupational injury and disease, even though no two businesses are identical.

Each classification combines the payroll and losses of similar employers to develop a price for the insurance protection. The only exceptions to this concept are clerical office employees, outside sales people, and drivers. Worker's compensation insurance uses approximately 650 separate business classifications for premium purposes.

## **The Experience Rating Plan**

The Experience Rating Plan offers a method for modifying the cost of insurance to match the characteristics of an individual employer. Employers whose business is too small to rely on past losses as statistically reliable predictors of future losses are not subject to experience rating. Experience rating groups all insureds according to their business operations or classification, adds together the losses of the group, and obtains an average cost for the group.

In worker's compensation experience rating the actual losses of the individual employer are determined over a period of time, usually three years. The losses are capped which makes the frequency not severity of losses more important for determining experience rates. This experience is then compared or contrasted with the average as reflected by the rate or rates which apply to the employer's business. If the employer has better than average costs, then credit is awarded, while poorer than average experience carries a debit rating. Experience rating takes average loss experience (rates), and modifies it by the individual employer's own loss experience.



## Health Insurance Coverage for Farm Accidents

Worker's compensation is highly recommended even for farmers who are not required to provide it by law. If you don't have worker's compensation for all family members who help with farm work, it is important to understand the policy of your health insurance company about coverage for on-farm injuries and farm-related illnesses.

You **cannot** assume that your health insurance policy will cover all farm accidents. Most health insurance policies exclude "treatment, services and supplies for any injury or illness covered by Worker's Compensation." Some policies may also exclude such treatment for any person who is **eligible for or covered by** worker's compensation. This includes any award or settlement you may receive for any disease or injury eligible for coverage. It also means the insurance company may not cover an injury or disease that would be covered under worker's compensation but is not as you did not elect to sign up even though you were eligible.

Ask questions and get written statements about coverage for all family members who may be helping with farm work. Although farm plans which are marketed only to farm families are more likely to cover farm-related illness or injuries, it is important to read the exclusions and clarify the benefits if you don't have worker's compensation.

## Legal Protections in the Event of Bankruptcy

There are two provisions in the law to protect workers in the event of bankruptcies.

### ***Self-Insurers' Security Fund***

The Self-Insurers' Security Fund is funded by assessments, on other self-insured employers. Should a self-insured employer go bankrupt, the Self-Insurers' Security Fund has the responsibility for making payments to injured workers. Should this occur, it is very important that the injured worker give notice of their claim to the Self-Insurers' Security Fund immediately. There is also a guaranty fund which assumes responsibility if an insurance company becomes bankrupt.

## ***Wisconsin Insurance Security Fund***

Every state has a safety net to protect insurance consumers from financial loss in the rare instance that a company becomes insolvent. This safety net is called a "guaranty fund." The guaranty funds are established by state law and are composed of licensed companies in the state. They pay the claims of policyholders and other claimants of an insolvent insurance company. The money to pay the claims against the insurance company comes from assessments made against all of the insurance companies that are members of the guaranty fund.

In Wisconsin, the fund is called the Insurance Security Fund (Fund). The Fund is created by state law and is funded by assessments of insurers licensed to do business in Wisconsin. In general, the Fund protects residents for most claims of licensed insurers in liquidation. The Fund should not be relied upon to eliminate all risks of loss to insureds due to insurer insolvency. Some types of policies may not be fully covered and significant delays could occur in settling obligations in cases of liquidation.

Questions about the coverage and limitations of the Fund can be addressed to:

Wisconsin Security Fund  
2445 Darwin Rd., #101  
Madison, WI 53704  
(608) 242-9473

## **Where Can I Get More Information About Coverage Under the Wisconsin Worker's Compensation Act?**

Questions often arise concerning the interpretation of the coverage and exclusion requirements of the law. Information and assistance concerning these issues is available from the Wisconsin Worker's Compensation Division, Bureau of Insurance Programs at (608) 266-1340 or write to P.O. Box 7901, Madison, WI 53707-7901. The Division is located in the GEF 1 State Office Building, Room C100, 201 E. Washington Avenue, Madison.

Copies of the Worker's Compensation Act of Wisconsin are available for purchase. Please call (608) 266-1340 for details. Some key statutes regarding employer liability to carry worker's compensation insurance under the Worker's Compensation Act, Chapter 102, are available at [http://www.dwd.state.wi.us/wc/legal/wc\\_act\\_intro.htm](http://www.dwd.state.wi.us/wc/legal/wc_act_intro.htm).



## Frequently Asked Questions

### **I've never had a loss, so why do my costs keep rising?**

Rates and employers' costs increase whenever losses in Wisconsin increase. Losses increase when there is a benefit increase in the law; when there are more losses; and when losses cost more in indemnity benefits or medical expenses.

The basic principle of insurance of "spreading of risk" applies in worker's compensation just as it does in all insurance. This means the employers who happen to have losses in a given year are subsidized by employers who don't have losses in that year. Without this "sharing" one large loss could make the cost of insurance prohibitive for the unfortunate employer.

### **Does this mean my premiums reflect losses of all employers in Wisconsin, even those with more hazardous work?**

The overall change in premium level in Wisconsin is based on total Wisconsin premiums and losses of all employers. However, once that determination is calculated, the change is distributed, first to "industry groups" (i.e. manufacturing risks, contracting risks, and all other risks), and then to the more than 650 classifications that represent the business of each insured employer. If the particular employer classification is a large class with many Wisconsin employers, such as "creameries," the final rate ultimately determined for the class is based primarily on the combined loss experience of all Wisconsin creameries only.

Smaller employer classes would have a rate based partially on the class experience, with the remainder based on the loss experience of similar businesses throughout the country, and the current underlying rate.

### **Do premiums paid by Wisconsin employers subsidize the losses of employers in other states?**

Wisconsin premium dollars are used for Wisconsin claims and other states are not directly subsidized. Some employers tend to confuse the use of countrywide experience in Wisconsin ratemaking with some form of subsidy. This is not the case. Countrywide loss experience is only used to develop class rates in Wisconsin when a class has no experience in the state. Even when no class exists a class rate is still developed because some employer

may eventually start that kind of business and need to buy a worker's compensation insurance policy.

### **If I operate year-after-year without a loss, does this mean I am subsidizing my competitors who have losses and receiving no benefit whatsoever for my good experience?**

If you are a very small risk, this could be true. However, a small risk could go 10 years without a loss and then experience one loss in the 11th year that costs more than the premiums paid by the employer during those 11 years. The benefit you get from insurance is the protection against catastrophic financial losses and peace of mind.

If you are a larger risk and have been paying premiums each year in excess of \$5,250, you **do** receive a benefit for your good experience. Likewise if you are a larger risk and have had poor loss experience, you will be penalized for your experience. Both of these adjustments occur under the Wisconsin Experience Rating Plan which is mandatory for all risks with annual premiums currently in excess of \$5,250.

### **I have a friendly competitor in my business and we both pay about \$25,000 a year in premium. In the three-year period used for experience rating, he had a claim that cost over \$100,000 while my losses averaged about \$2,000 or less and my three-year total losses were only \$15,000. Yet, he received an experience rating credit and I was debited. How can this happen? Is this fair?**

Yes, it can happen and from an insurance viewpoint it is completely fair. To understand these answers one must understand the Experience Rating Plan and how it works.

The Experience Rating Plan is designed and intended to "reward" risks with good loss experience and "penalize" the risks with poor experience. In deciding what kind of employer is good or poor, the emphasis is on frequency of loss. The insurance logic is: "Anyone can have a bad loss, while still being a good, safe operating employer. An employer having many losses however, even if they are all smaller losses, probably has a safety problem and will continue to have many losses until something is done by the employer to correct the problem."

For example, an executive of a firm could be killed in a plane crash while on business and this could easily be over a \$100,000 loss, yet it has nothing to do with

the safety of the firm's overall operations. Because of this, the Experience Rating Plan equalizes the effects of losses by limiting each loss of the rated employer to a maximum of \$5,250. In this example, the one employer had only \$5,250 of actual losses (the \$100,000 reduces to \$5,250) while the other employer had several smaller losses totaling \$15,000. If the expected losses for both employers was about \$12,000 you can see why the first employer still received a credit (\$5,250 compared to \$12,000), and the second was debited (\$15,000 compared to \$12,000). Worker's compensation studies have shown that a risk that has many smaller losses, year-after-year, is the more costly risk to insure in the long run.

**My agent obtained my worker's compensation insurance through the Pool because he couldn't get coverage from any company he represented. Does this mean I'm a bad risk? Is insurance through the Pool detrimental to me in any way?**

Being insured through the Pool does not mean the employer is a "bad risk" nor is there a negative stigma to being in the Pool. In fact the rates are exactly the same in the Pool as in the voluntary market. This does not mean that there are no price disadvantages.

Risks with over \$5,250 in premium receive a "premium discount" in the voluntary market to recognize expense savings. Pool risks do not receive a premium discount. Many risks are eligible to receive dividends when insured in the voluntary market. Pool risks are **not** eligible. Employers with operations in several states can usually insure all of their operations under one worker's compensation insurance policy in the voluntary market. A Pool policy covers only Wisconsin operations and additional policies would need to be purchased to cover operations in other states.

**What risks are most commonly insured through the Pool?**

Most of the risks insured through the Pool have generally been identified as one or more of the following:

- The risk is considered a poor risk because of a terrible loss experience and no insurance company will voluntarily insure it unless the employer takes steps to reduce or eliminate losses.

- The risk is in a business that generally is not profitable to insure and insurance companies are not voluntarily writing this particular class of business at the present time.
- The risk is a new employer and has not been operating long enough to have a loss experience "track record." Insurance companies tend to wait and see how a new employer does during the first three to five years.
- The agent for the risk represents few or perhaps only one insurance company and the insurance company is not writing worker's compensation for the particular class of business at this time.
- The risk is very small with estimated premiums under \$2,000. Few insurance companies are interested in insuring smaller risks because of the difficulty to achieve a profit insuring these risks. Much of the premium is used for expenses with little left to pay losses.

**I'm a small risk with very little payroll and I have to pay a "minimum premium" which is just too high. Why?**

Minimum premiums in Wisconsin are established for each classification by the WCRB and approved by the Commissioner of Insurance. The minimum premiums cover the expense of issuing a policy with a nominal amount available for losses. Classifications with lower rates have lower minimum premiums and classes with higher rates have higher minimum premiums. Generally the minimum premium is based on an annual payroll of \$17,000 which is less than half of the average annual wage for one employee in Wisconsin. As the state average annual wage increases, so do minimum premiums subject to the applicable maximum. Currently the minimum premium is capped at \$900.

Wisconsin is the only state to have a "minimum-minimum premium" rule. This special rule provides that the minimum premium can be adjusted at the end of the policy whenever the minimum premium is greater than 20% of the actual earned payroll of the employer. In those cases, the final applicable minimum premium is limited to 20% of the earned payroll, but not less than the policy expense constant which is currently \$210.

**I think I'm misclassified. My employees do different work than the employees of others I'm classified with! What can I do?**

Under Wisconsin law, the WCRB has the responsibility and the authority to classify risks in any reasonable manner. The WCRB generally follows the same classifications developed by the National Council on Compensation Insurance (a national rating organization that is advisory in Wisconsin) but there are a number of Wisconsin exceptions.

Worker's compensation insurance is very unusual in two distinct ways; first, it is mandatory for most employers; and secondly, the named insured is **not** the direct recipient of the policy benefits.

Employees receive benefits that are paid by the insurance company on behalf of the employer which is the named insured. In classifying the risk, the Rating Bureau does not look at what work an employee does, but rather classifies the business of the insured employer. The only exceptions to this concept are clerical office employees, outside sales people, and drivers.

Some employers actually engage in several businesses at the same time. Contractors could actually have employees working in the carpentry business, others in the plumbing business, and still others in several different trades. If the employer keeps separate payrolls for each trade they are assigned classifications to each "business" or trade.

If after reviewing your business and the business of those you compete with, and you believe that you are misclassified, please contact the WCRB and request an inspection. The WCRB has three full-time inspectors who average about 1,750 inspections per year. Inspections are conducted within 30-45 days after receipt of a request. The inspections will either verify the accuracy of the classification assigned or will reclassify your business properly.

**For information on how to file  
an insurance complaint call:**

**(608) 266-0103 (In Madison)  
or  
1-800-236-8517 (Outside Madison)**

## Worker's Compensation Questions? Here's Whom To Contact

### Worker's Compensation Division of the Department of Workforce Development (DWD)

<http://www.dwd.state.wi.us>

P. O. Box 7901  
Madison, WI 53707-7901  
(608) 266-1340 (Phone)  
(608) 267-0394 (Fax)

- All Questions Relating to the WI Worker's Compensation Act
- All Injury/Claim Questions
- Compliance Questions
- Corporate Officer Options Questions
- Enforcement Questions
- Penalty and Penalty Payment Plan Questions
- Self Insurance Questions
- Divided Insurance Questions
- Wrap-up Policy Questions
- Withdrawal Questions

### Wisconsin Compensation Rating Bureau (WCRB)

<http://www.wcrb.org>

P. O. Box 3080  
Milwaukee, WI 53201-3080  
(262) 796-4540 (Phone)  
(262) 796-4400 (Fax)

- Wisconsin Worker's Compensation Insurance Pool Questions
- Rate Questions
- Inspection Questions
- Audit Questions
- Premium Charging Questions
- Classification Questions
- Experience Modification Questions
- All Questions Regarding the Proper Filing of Policies and Endorsements Pertaining to Wisconsin Coverage
- Insurance Company Filing Questions
- Endorsement Filing Questions
- Questions Regarding Appeal Rights Of A WCRB Decision
- Questions about Statistical Reporting

### Office of the Commissioner of Insurance (OCI)

<http://oci.wi.gov>

P. O. Box 7873  
Madison, WI 53707-7873  
1-800-236-8517 (Phone)  
(608) 264-8115 (Fax)

- All Questions Relating to the Insurance Laws
- Questions Related to the Licensing & Regulation of Insurance Companies
- Unfair Claim Settlement Practices Questions
- Unfair Marketing Practices Questions
- Worker's Compensation Rate Regulation Questions
- Worker's Compensation Dividend Plans Questions
- Questions Related to the Licensing & Regulation of WCRB